

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No.: 1:19-cr-10041-JDB

BRITNEY PETWAY, N.P., and
CHARLES ALSTON, M.D.

Defendant.

ORDER CONTINUING TRIAL DATE AND SCHEDULING
REPORT/STATUS CONFERENCE

Before the Court is Defendant's motion for continuance of the trial in this case, set for July 12, 2021. (Docket Entry 188.) The superseding indictment charges conspiracy to distribute and dispense controlled substances, and aiding and abetting in unlawfully distributing and dispensing controlled substances, not for a legitimate medical purpose and outside the scope of professional practice. The Defendants involved in this indictment are Britney Petway, a nurse practitioner and Charles Alston, a supervisory physician. Petway previously pleaded guilty to all counts in the superseding indictment.

On June 11, 2021, counsel for Alston moved to continue the trial based on defense counsel's receipt from the prosecution on May 18, 2021, of an email identifying thirteen new persons with knowledge, specifically nurse practitioners, who had been supervised by Alston during the period of the indictment. Defendant argues that the disclosure of these additional persons/witnesses constitutes an unfair surprise and would not permit counsel sufficient opportunity to investigate these potential witnesses nor allow defense counsel's expert witness to

review the CSMD data prior to the scheduled trial date. In addition, defense counsel claims that this late disclosure constitutes evidence under Federal Rules of Evidence 404(b), which would require additional time to prepare for trial. Defendant seeks a continuance of 60 days.

In addition, Defendant also has filed a notice to exclude witnesses and to preclude evidence which Alston claims is irrelevant or otherwise inadmissible all pertaining to the potential introduction of these thirteen nurse practitioner witnesses. Because of the Court's ruling on the motion to continue, the Court will hold this motion in abeyance and direct the parties to more fully brief the issues related to this potential evidence, with legal authority in support of their respective positions.

Accordingly, considering the Defendant's motion and the response thereto, the Court is of the opinion that the current trial date of July 12, should be continued and a status/report date shall be set for July 14, 2021 at 3:00 P.M. by TEAMS video. Time is exclude through July 14, 2021. The parties are to file with the Court their written positions with legal authority by July 9, 2021, as to the issues noted herein. On that date, the Court will set a new trial date with other deadlines related to the trial.

IT IS SO ORDERED, the 28th day of June 2021.

s/ J. DANIEL BREEN
J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE